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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/774,901      | 02/09/2004  | Arlan Dean Heil      | HEIL 005            | 8776             |

7590 03/29/2006

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| EXAMINER |
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ALI, SHUMAYA B

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| ART UNIT | PAPER NUMBER |
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3743

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

10/774,901

**Applicant(s)**

HEIL, ARLAN DEAN

**Examiner**

Shumaya B. Ali

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21,25-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>detailed action</u>                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of **species 2 claims 25-29** in the reply filed on **1/21/06** is acknowledged.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 21 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Heaney US Patent 4,329,982.**

3. As to **claim 20**, **Heaney** discloses an apparatus for inhibiting foot eversion (see **col.1 lines 6-7, col.3 lines 1-2**), the apparatus comprising a cuff (see **fig.1 reference object 10**) positionable around a leg immediately above an ankle joint (see **col.3 lines 38-41**), a strap (see **fig.1 reference object 20**) with a first end (see **fig.1 a first end connected to the cuff**) and a second end (see **fig.1 a second end connected to the lateral side of a shoe via reference object 30**), the first end connected to the cuff (see **fig.1 a first end connected to the cuff**) and the second end (see **fig.1 a second end connected to the lateral side of a shoe via reference object 30**) connectible to footwear (see **fig.1 reference object B**) at a location on a portion (**forward portion of a shoe, see col.2 lines 64-65**) of the footwear at an outer side thereof.

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4. As to claim 25, Heaney discloses wherein the cuff is positionable above (depicted in fig.1, see col.3 lines 38-41) protruding parts of the ankle thereby preventing the cuff from moving down on the leg below the ankle.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heaney US Patent 4,329,982 in view of Goffredo US Patent 2,584,010**

6. As to claim 26, Heaney does not disclose the apparatus of claim 10 wherein the cuff is at least partially supported by the protruding parts of the ankle to facilitate inhibition of eversion of the foot. As to claim 11, Goffredo clearly depicts in figure 1 that the strap is placed upon (includes the protruding parts of the ankle) the ankle (see col.2 lines 26-27), therefore, the strap is at least partially supported by the protruding parts of the ankle to support a weakened foot (see col.2 lines 48-50). Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the invention of

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**Heaney in view of Goffredo in order to provide a cuff that is at least partially supported by the protruding parts of the ankle for the purposes of supporting a weakened foot.**

**Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heaney US Patent 4,329,982 in view of Broadhurst et al. US Patent 4,982,733**

7. As to claim 27, Heaney does not disclose the apparatus of claim 21 further comprising adjustability means for adjusting length of the strap between the cuff and the footwear. As to claim 12, Broadhurst et al. teach ankle brace which emphasizes the stabilization of the ankle joint by straps which are adapted to be specifically positioned to prevent or reduce inversion of the ankle with minimal limitation of other movements within the joint (see col.2 lines 45-51). The brace comprises a cuff, first and second flexible, non-elastic strap means (see col.2 lines 62-63), whereas the strap has a plate portion ("footwear") and a cuff portion (see col.4 lines 42-44). The cuff portion is detachably connected with buckle and may be pulled upwardly to shorten or tighten the strap. Therefore, it would have been obvious to one of ordinary skills in art at the time the invention was made to modify the drop foot device of Heaney in view of Broadhurst et al. in order to provide adjustability means for the purposes of adjusting the length of the strap by pulling upwardly to shorten or tighten the strap.

8. As to claim 28, Heaney does not disclose the apparatus of claim 21 wherein the adjustability means is from the group consisting of openable-closable clasp and buckle apparatus. As to claim 13, Broadhurst et al. teach ankle brace which emphasizes the

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**stabilization of the ankle joint by straps which are adapted to be specifically positioned to prevent or reduce inversion of the ankle with minimal limitation of other movements within the joint (see col.2 lines 45-51). The brace comprises a cuff, first and second flexible, non-elastic strap means (see col.2 lines 62-63), whereas the strap has a plate portion (“footwear”) and a cuff portion (see col.4 lines 42-44). The cuff portion is detachably connected with buckle and may be pulled upwardly to shorten or tighten the strap. Therefore, it would have been obvious to one of ordinary skills in art at the time the invention was made to modify the drop foot device of Heaney in view of Broadhurst et al. in order to provide a buckle as adjustability means for the purposes of adjusting the length of the strap by pulling upwardly to shorten or tighten the strap.**


**9. As to claim 29, Heaney does not disclose the apparatus of claim 21 wherein the cuff includes cushion material for the comfort of a user of the apparatus. As to claim 14, Broadhurst et al. teach ankle brace which emphasizes the stabilization of the ankle joint by straps which are adapted to be specifically positioned to prevent or reduce inversion of the ankle with minimal limitation of other movements within the joint (see col.2 lines 45-51). The brace comprises a cuff section, which is cloth covered Neoprene material (“cushion material”) (see col.4 lines 17-18) with a peripheral contour similar to the cuff (see col.4 lines 27-28) providing additional padding to the cuff. Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the drop foot device of Heaney in view of Broadhurst et al. in order to provide a cushion material for the purposes of providing a padding or cushioning adjacent to an ankle.**

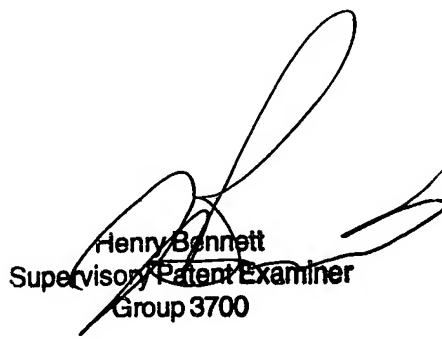
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Shumaya B Ali 3/24/06  
Examiner  
Art Unit 3743

  
Henry Bennett  
Supervisor, Patent Examiner  
Group 3700